

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
ACC Licensee, Inc.	)	File No. BRCT-20040526ADY
	)	ID No. 1051
	)	
Application for Renewal of License of	)	
Television Station, WJLA-TV,	)	
Washington, D.C.	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: October 18, 2007**

**Released: October 19, 2007**

By the Chief, Video Division, Media Bureau:

1. The Commission, by the Chief, Video Division, pursuant to delegated authority, has before it for consideration an application by ACC Licensee, Inc. (ACC) for the renewal of the license of television station WJLA-TV, Washington, D.C. A petition to deny (Petition) was filed by Theodore M. White (White). For the reasons stated below, we deny the Petition.

2. **Background.** White's Petition is based on the relationship of Joe L. Allbritton, Barbara B. Allbritton, and Robert L. Allbritton, who ultimately control the licensee, and Riggs Bank N.A. (Riggs), with which the Allbrittons were formerly involved through equity investments and through positions as officers and directors. None of White's allegations pertain to WJLA-TV or its operations and none of them are supported by an affidavit based on upon personal knowledge of the facts alleged. Instead, White relies on documents from government regulatory agencies,<sup>1</sup> excerpts from Riggs' annual reports, and newspaper stories from the Internet.

3. In his Petition, White alleges that the federal government has investigated Riggs' international bank relationships and practices and has issued "a number of directives"<sup>2</sup> at Riggs, which are premised on investigations that allegedly revealed failure to guard against money laundering in "dealing with foreign dictators" in violation of federal banking regulations. He further alleges that federal agencies have continued to investigate Riggs for violation of anti-money-laundering rules and have investigated Joe Allbritton's activities at Riggs to determine whether he violated any laws. White also states that, at the time of the alleged bank regulation

<sup>1</sup> White has attached to his pleadings consent orders and related stipulations and agreements between Riggs and the Office of the Comptroller of the Currency (OCC) and the Financial Crimes Enforcement Network (FinCEN)(part of the Department of the Treasury), and a decision by the Board of Governors of the Federal Reserve.

<sup>2</sup> White does not specify what he means by "directives," but presumably he is referring to the requirements for Riggs' future conduct set out in the various consent decrees. See, e.g., *Riggs National Corporation*, Docket Nos. 04-011-B-HC, 04-011-b-EC, attached as Exhibit 7 to Petition to Deny.

violations, Robert Allbritton was chairman of the bank's committee responsible for preventing money laundering. Finally, White alleges that Riggs entered into various consent agreements with federal regulators on May 13, 2004.

4. Based on these allegations, White claims that Riggs has a "disturbing propensity to engage in wrongdoing for financial gain. He also alleges that the "facts uncovered by the investigating agencies reflect an unacceptable level of malfeasance and a deceitful lack of candor."

5. In opposition, ACC states that all of White's allegations involve unadjudicated claims. ACC goes on to state that Riggs entered into the consent decree with the OCC without admitting any wrongdoing and quotes the consent decree as saying that "it shall not be construed as an adjudication on the merits." ACC also points out that both the FinCEN consent decree and the Federal Reserve consent order contain language stating that Riggs is entering into them without admitting or denying wrongdoing and stating that there has been no adjudication on the merits.<sup>3</sup>

6. In a supplement to his Petition, White presents evidence that Riggs agreed to enter a guilty plea in *United States v. Riggs Bank, N.A.*<sup>4</sup> Attached to White's supplement is a letter from Kenneth L. Wainstein, then-United States Attorney for the District of Columbia, to Mark J. Hulkover, counsel for Riggs, dated January 27, 2005, which states that it is a plea offer to Riggs by the Criminal Division of the United States Attorney's Office for the District of Columbia (Plea Agreement). Under the terms of the Plea Agreement, Riggs pled guilty to a one-count information charging it with a violation of the Bank Secrecy Act<sup>5</sup> (BSA) for failing to file timely and/or accurate suspicious activity reports. The Plea Agreement covers only Riggs and does not name the Allbrittons.

7. White contends that a guilty plea by Riggs to one count of a criminal violation of the BSA constitutes an adjudication on the merits of non-FCC misconduct by the Allbrittons that is sufficient to warrant designation for hearing of WJLA's renewal application. In its response to the supplement, ACC argues that the plea by the corporate entity Riggs does not warrant hearing designation because, *inter alia*, it does not identify any misconduct by the common principals of ACC and Riggs.

8. On April 19, 2006, ACC submitted a report on the status of litigation (Status Report) involving Riggs. ACC reported that two class action suits against Riggs, Joe and Robert Allbritton and other Riggs officers had been settled. ACC also reported that the final judgment had been entered accepting the Plea Agreement in *United States v. Riggs*. Finally, the Status Report stated that a settlement had been reached which resolved several claims against Riggs and the Allbrittons for activities related to alleged misconduct by Augusto Pinochet committed in Chile and Argentina. The Status Report quotes the settlement as saying, "events have occurred

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<sup>3</sup> In its opposition, ACC includes an extensive discussion of WJLA-TV's broadcast record and its public service record. White has not claimed that WJLA-TV has failed to meet its public service obligations to air programming responsive to local community needs or that WJLA-TV and its employees have failed to participate in public service in the Washington, D.C. area.

<sup>4</sup> *United States v. Riggs Bank, N.A.*, No. Cr. 05-0035 (D.D.C. Mar. 31, 2005).

<sup>5</sup> 31 U.S.C. §5311 *et seq.*

which have revealed the lack of willful intent to commit the above-mentioned unlawful acts, on the part of the banking institution and its representatives.”<sup>6</sup> According to the Status Report, none of these proceedings resulted in any adjudicated wrongdoing or charges against any officers or directors of the licensee or any other officials related to the statement.

9. In response to the Status Report, White reiterates his argument that substantial questions have been raised about ACC’s qualifications to remain a Commission licensee because of the questions that have been raised in regard to the Allbrittons’ involvement with Riggs. He says there is no reason to believe that the Allbrittons will not be prosecuted at some point in the future. He also includes a Wikipedia<sup>7</sup> story in supposed support of his allegations.

10. **Standard of Review.** Section 309(k) of the Communications Act states that the Commission shall grant a broadcast renewal application if it “finds, with respect to that station, during the preceding term of its license” that the station has served the public interest and that there have been no serious violations of the Communications Act or the Commission’s rules and no other violations of the Communications Act or the Commission’s rules that constitute a “pattern of abuse.”<sup>8</sup> As discussed above, White has not alleged any violations of the Communications Act or the Commission’s Rules by the licensee. It is unclear whether, under Section 309(k), we have the authority to deny the renewal of WJLA-TV absent such violations. However, we do not need to reach the issue of the scope of 309(k) here because, even if we could deny the renewal based solely on non-FCC misconduct, White has failed to make a *prima facie* case of misconduct, as discussed below.

11. The Commission applies a two-step analysis to a petition to deny under the public interest standard. The Commission must first determine whether the petition contains specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest.<sup>9</sup> This first step “is much like that performed by a trial judge considering a motion for directed verdict: if all the supporting facts alleged in the [petition] were true, could a reasonable factfinder conclude that the ultimate fact in dispute had been established.”<sup>10</sup>

12. Once a petition meets this first step, the Commission must determine whether, “on the basis of the application, the pleadings filed, or other matters which [the Commission] may officially notice,” the petitioner has raised a substantial and material question of fact as to whether granting the application would serve the public interest.<sup>11</sup> Courts have held that, in

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<sup>6</sup> *Quoting Reasoned Ruling*, Central Court of Investigation No. 5, Madrid, NIG: 28079 27 2 1996 0007036 (decided Feb. 25, 2005).

<sup>7</sup> Wikipedia is an online site that describes itself as “the free encyclopedia that anyone can edit.” See [http://en.wikipedia.org/wiki/Main\\_Page](http://en.wikipedia.org/wiki/Main_Page).

<sup>8</sup> 47 U.S.C. § 309(k).

<sup>9</sup> 47 U.S.C. §309(d)(1); *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) (“*Astroline*”).

<sup>10</sup> *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987) (“*Gencom*”).

<sup>11</sup> *Astroline*, 857 F.2d at 1561; 47 U.S.C. §309(e). See also *Gencom*, 832 F.2d at 181.

making this determination, the Commission has wide discretion in that it weighs the petitioner's evidence but against the facts offered in rebuttal;<sup>12</sup> may draw factual and legal inferences from undisputed evidentiary facts;<sup>13</sup> and may determine how much weight to accord disputed facts based on the record before it.<sup>14</sup> A substantial and material question is raised when "the totality of the evidence arouses a sufficient doubt on the [question of whether grant of the application would serve the public interest] that further inquiry is called for."<sup>15</sup>

13. Under the Commission's Rules, a petition to deny must contain specific allegations of fact, supported by affidavits from individuals with personal knowledge of the facts at issue, except for those of which official notice may be taken, which are sufficient to show that grant of the application, on its face, would be inconsistent with the public interest, convenience and necessity.<sup>16</sup> Although White's Petition does contain a declaration that he is a resident of Washington D.C., is a regular viewer of WJLA, and that the facts in his Petition are true and correct to the best of his knowledge and information, he does not contend that he has any personal knowledge of the Allbrittons' activities at Riggs or of any specific misdeeds by Riggs or the Allbrittons. We can and will take official notice of the contents of the consent decrees submitted by White and of the Plea Agreement, and we will also take into consideration statements made by Riggs in its own annual report. However, news reports, whether from newspapers or the Internet, and Wikipedia citations are not in any way statements supported by affidavits made by individuals with personal knowledge of the facts alleged. Wikipedia, in particular, states on its site that it "cannot guarantee the validity of the information found here."<sup>17</sup> Therefore, we will not consider those materials in reaching our decision here.

14. **Discussion.** The fact that a party has been or may be investigated by a government agency alone is not sufficient to warrant a designation of its application for hearing. The Commission has repeatedly held that an adjudicated finding of serious wrongdoing, including conviction of a felony or a serious misdemeanor, is necessary for an application to be designated for hearing when non-broadcast related conduct is at issue.<sup>18</sup> A consent decree does not constitute an adjudication on the merits for our purposes.<sup>19</sup> Of the various allegations made by

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<sup>12</sup> *Astroline*, 857 F.2d at 1561.

<sup>13</sup> *Stone v. FCC*, 466 F.2d 316, 323 (D.C. Cir. 1972).

<sup>14</sup> *Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392, 395 (D.C.Cir.1985) ("*Citizens for Jazz*").

<sup>15</sup> *Id.*

<sup>16</sup> *Astroline*, 857 F.2d at 1561; *Stone v FCC*, 466 F.2d 316 (D.C. Cir. 1972); 47 U.S.C. § 309.

<sup>17</sup> *Id.* Moreover, the Commission has stated that, for purposes of section 309(d) "[p]etitioners must allege specific facts, and those facts must be matters of which we can take official notice or be supported by an affidavit from a person with first hand-knowledge of the facts alleged. Affidavits based on "information and belief," and information set out in newspapers or magazines do not meet statutory requirements." *Applications of Univision Holdings, Inc. (Transferor) and Perenchio Television, Inc. (Transferee)*, 7 FCC Rcd 6672, 6673 at para. 4 (1992).

<sup>18</sup> *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179 (1986) (*Character Policy Statement*).

<sup>19</sup> See *Policy Regarding Character Qualifications in Broadcast Licensing*, 6 FCC Rcd 3448 (1991). In addition, "directives" given by a government agency do not constitute an adjudicated finding of wrongdoing.

White and the various proceedings that he enumerates, the only item that arguably constitutes an adjudication on the merits is the guilty plea by Riggs to one count of violating the BSA.

15. The guilty plea was made by Riggs and does not contain any admissions of guilt or findings against the Allbrittons or any party associated with WJLA-TV. It does not name the Allbrittons as responsible for any malfeasance, concealment, lack of candor or involvement in any illegal activity.

16. ACC rightly states that the non-FCC misconduct of an affiliate of a licensee generally will only be considered if there is sufficient nexus between the misconduct, those engaged in the misconduct, and the broadcast licensee.<sup>20</sup> In assessing the nexus, we will only consider the significance of the non-FCC misconduct and its effects on the broadcast affiliate if, among other things, there is a “close ongoing relationship” between the affiliates and the responsible parties are actively involved in the day-to-day operations of the broadcast subsidiary.<sup>21</sup> Where the affiliates are related through common ownership, we focus on the actual involvement of the principals in the misconduct and the day-to-day operations of the station.<sup>22</sup>

17. There is no dispute that ACC is ultimately controlled by the Allbritton family. ACC states that Joe Allbritton ultimately controls the licensee through his majority ownership of its privately held parent company and that Barbara and Robert Allbritton hold positional interests in those parent companies. During the relevant time period, the Allbrittons also held positional interests at the bank, with Joe and Robert Allbritton both having served as Chairman and CEO. However, there is no adjudicated finding that any of the Allbrittons had any involvement with the violation of the BSA. There is no finding that the wrongdoing had any connection with or effect on the licensee. Further, there is no evidence that the operations of the licensee and the operations of the bank were connected. Based on the record before us, we find that there is not an adequate nexus between the misconduct, those engaged in the misconduct, and the licensee sufficient to impute the misconduct to the licensee. Therefore, there is no adjudicated finding of wrongdoing by the licensee or its principals to support White’s allegations. As a result, we find that White has failed to make a *prima facie* case that grant of the application would not be in the public interest.

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<sup>20</sup> *Character Policy Statement*, 102 FCC 2d at ¶ 80-82; *Policy Regarding Character Qualifications in Broadcast Licensing, Memorandum Opinion and Order on Reconsideration*, 1 FCC Rcd 421, 423 (1986).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

18. ACCORDINGLY, IT IS ORDERED THAT, the petition to deny filed by Theodore M. White against the application for renewal of WJLA-TV, Washington, D.C., File No. BRCT-20040526ADY IS DENIED and the application for the renewal of license of WJLA-TV, Washington, D.C. (File No. BRCT-20040526ADY) IS GRANTED.

**FEDERAL COMMUNICATIONS COMMISSION**

Barbara A. Kreisman,  
Chief, Video Division  
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